

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LAMONT CAESAR,)
Plaintiff,)
v.)
District Judge Susan Paradise Baxter
SERGEANT KEMP, et al.,)
Defendants.) Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

Plaintiff Lamont Caesar, an inmate incarcerated at the State Correctional Institution at Phoenix in Collegeville, Pennsylvania, initiated this action by filing a *pro se* civil rights complaint against six officials employed at the State Correctional Institution at Forest (“SCI-Forest”), where Plaintiff was formerly incarcerated: Superintendent Oberlander, Deputy Superintendents Mongelluzzo and Adams, Sgt. Kemp, and Librarians Blake and Winters. Plaintiff’s complaint alleges that Defendants Kemp, Adams, Oberlander, and Mongelluzzo failed to protect him from the COVID-19 virus in violation of his Eighth Amendment rights; that Defendants Blake and Winters retaliated against him in violation of his First Amendment rights; and that Defendants Blake and Winters conspired to retaliate against him. This matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On July 19, 2023, Defendants filed a partial motion to dismiss [ECF No. 19], seeking dismissal of Plaintiff’s claims against Defendants Kemp, Adams, Oberlander, and Mongelluzzo,

for failure to state a claim, as well as dismissal of Plaintiff's official capacity claims for monetary damages against all Defendants. The motion was fully briefed by the parties.

On January 29, 2024, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that Defendants' motion be granted, that Plaintiff's official capacity claims for money damages against all Defendants be dismissed with prejudice, and that Plaintiff's Eighth Amendment claim against Defendants Kemp, Adams, Oberlander, and Mongelluzzo be dismissed, without prejudice to Plaintiff's right to amend his complaint to correct the deficiencies noted in the R&R [ECF No. 23]. Objections to the R&R were due by February 15, 2024; however, no objections have been filed.

After *de novo* review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 27th day of February, 2024;

IT IS HEREBY ORDERED that Defendants' partial motion to dismiss [ECF No. 19] is GRANTED insofar as Plaintiff's official capacity claims for money damages against all Defendants are DISMISSED with prejudice, and Plaintiff's Eighth Amendment claim against Defendants Kemp, Adams, Oberlander, and Mongelluzzo is DISMISSED, without prejudice to Plaintiff's right to file an amended complaint to correct the deficiencies noted in the R&R within thirty (30) days of the date of this Order. In the event Plaintiff fails to file an appropriate amended complaint within such time, the Court's dismissal of Plaintiff's Eighth Amendment claim against Defendants Kemp, Adams, Oberlander, and Mongelluzzo will be converted to a dismissal with prejudice without further notice. The report and recommendation of Chief Magistrate Judge Lanzillo, issued January 29, 2024 [ECF No. 23], is adopted as the opinion of

the court.



Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief U.S. Magistrate Judge
all parties of record